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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 NEIL GOMEZ,

8 Plaintiff,

9 v.

10 DOUGLAS HEDGER,

11 Defendant.

Case No. 2:18-cv-00176-RFB-GWF

**ORDER
REPORT AND RECOMMENDATION**

12 This matter is before the Court on Plaintiff 's Application to Proceed *In Forma Pauperis*
13 (ECF No. 1), filed on January 31, 2018.

14 **BACKGROUND**

15 Plaintiff's Complaint alleges that Judge Douglas Hedger, who appears to be a Municipal
16 Court Judge, violated Plaintiff's constitutional rights. *See Complaint* (ECF No. 1-1). He asserts
17 that he was denied a fair and speedy trial and that he was prematurely sentenced without a trial
18 by being ordered to house arrest. *Id.* at 2.

19 **DISCUSSION**

20 **I. Application to Proceed *In Forma Pauperis***

21 Plaintiff filed this instant action and attached a financial affidavit to his application and
22 complaint as required by 28 U.S.C. § 1915(a). Reviewing Plaintiff's financial affidavit pursuant
23 to 28 U.S.C. § 1915, the Court finds that Plaintiff is unable to pre-pay the full filing fee. As a
24 result, Plaintiff's request to proceed *in forma pauperis* in federal court is granted.

25 **II. Screening the Complaint**

26 Upon granting a request to proceed *in forma pauperis*, a court must additionally screen a
27 complaint pursuant to 28 U.S.C. § 1915(e). Specifically, federal courts are given the authority to
28 dismiss a case if the action is legally "frivolous or malicious," fails to state a claim upon which

1 relief may be granted, or seeks monetary relief from a defendant/third party plaintiff who is
2 immune from such relief. 28 U.S.C. § 1915(e)(2). A complaint, or portion thereof, should be
3 dismissed for failure to state a claim upon which relief may be granted “if it appears beyond a
4 doubt that the plaintiff can prove no set of facts in support of his claims that would entitle him to
5 relief.” *Buckey v. Los Angeles*, 968 F.2d 791, 794 (9th Cir. 1992). A complaint may be
6 dismissed as frivolous if it is premised on a nonexistent legal interest or delusional factual
7 scenario. *Neitzke v. Williams*, 490 U.S. 319, 327–28 (1989). Moreover, “a finding of factual
8 frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly
9 incredible, whether or not there are judicially noticeable facts available to contradict them.”
10 *Denton v. Hernandez*, 504 U.S. 25, 33 (1992). When a court dismisses a complaint under §
11 1915(e), the plaintiff should be given leave to amend the complaint with directions as to curing
12 its deficiencies, unless it is clear from the face of the complaint that the deficiencies could not be
13 cured by amendment. *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

14 The Court shall liberally construe a complaint by a pro se litigant. *Eldridge v. Block*, 832
15 F.2d 1132, 1137 (9th Cir. 2007). This is especially important for civil rights complaints. *Ferdik*
16 *v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992). However, a liberal construction may not be
17 used to supply an essential element of the claim absent from the complaint. *Bruns v. Nat’l*
18 *Credit Union Admin.*, 12 F.3d 1251, 1257 (9th Cir. 1997) (quoting *Ivey v. Board of Regents*, 673
19 F.2d 266, 268 (9th Cir. 1982)).

20 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a
21 complaint for failure to state a claim upon which relief can be granted. Review under Rule
22 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Laboratory Corp. of*
23 *America*, 232 F.3d 719, 723 (9th Cir. 2000). A properly pled complaint must provide a “short
24 and plain statement of the claim showing that the pleader is entitled to relief.” Fed.R.Civ.P.
25 8(a)(2); *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Although Rule 8 does not
26 require detailed factual allegations, it demands “more than labels and conclusions” or a
27 “formulaic recitation of the elements of a cause of action.” *Ashcroft v. Iqbal*, 129 S.Ct. 1937,
28 1949 (2009) (citing *Papasan v. Allain*, 478 U.S. 265, 286 (1986)). The court must accept as true

1 all well-pled factual allegations contained in the complaint, but the same requirement does not
2 apply to legal conclusions. *Iqbal*, 129 S.Ct. at 1950. Mere recitals of the elements of a cause of
3 action, supported only by conclusory allegations, do not suffice. *Id.* at 1949. Secondly, where
4 the claims in the complaint have not crossed the line from plausible to conceivable, the
5 complaint should be dismissed. *Twombly*, 550 U.S. at 570.

6 **III. Instant Complaint**

7 **A. Subject Matter Jurisdiction**

8 Federal district courts are courts of limited jurisdiction, deriving their power to hear cases
9 from specific congressional grants of jurisdiction. *United States v. Sumner*, 226 F.3d 1005, 1009
10 (9th Cir. 2000). Limited jurisdiction means that federal courts (1) possess only that power
11 authorized by the Constitution or a specific federal statute and (2) do not have jurisdiction over a
12 matter simply because the alleged wrong occurred in the same city, county, or state in which the
13 court sits. *See* U.S. Const. art. III, § 2, cl. 1. Generally, subject matter jurisdiction may derive
14 from diversity of the parties, which are “civil actions where the matter in controversy exceeds the
15 sum or value of \$75,000 ... and is between citizens of different States,” or from claims involving
16 a federal question, which are “civil actions arising under the Constitution, laws, or treaties of the
17 United States.” *See* 28 U.S.C. § 1331; 28 U.S.C. § 1332.

18 Rule 8(a)(1) of the Federal Rules of Civil Procedure states that a “claim for relief must
19 contain ... a short plain statement of the grounds for the court’s jurisdiction.” Fed. R. Civ. P.
20 8(a)(1). The burden of proving jurisdiction rests on the party asserting jurisdiction. *See McNutt*
21 *v. Gen. Motors Acceptance Corp.* 298 U.S. 178, 182–83 (1936). Plaintiff does not state the
22 grounds for the Court’s jurisdiction in his complaint nor does the complaint contain allegations
23 demonstrating that the Court has jurisdiction.

24 **B. Plaintiff’s § 1983 Claim**

25 42 U.S.C. § 1983 creates a path for the private enforcement of substantive rights created
26 by the Constitution and Federal Statutes. *Graham v. Connor*, 490 U.S. 386, 393-94 (1989). In
27 order to state a claim under § 1983, a plaintiff “must allege the violation of a right secured by the
28 Constitution and the laws of the United States, and must show that the alleged deprivation was

1 committed by a person acting under color of law.” *West v. Atkins*, 487 U.S. 42, 48-49 (1988). A
2 person acts under “color of law” if he “exercise[s] power possessed by virtue of state law and
3 made possible only because the wrongdoer is clothed with the authority of state law.” *West*, 487
4 U.S. at 49. Plaintiff seeks relief for what appears to be alleged violations of his Sixth
5 Amendment rights and may intend to do so under § 1983. Plaintiff appears to be a defendant in a
6 matter over which Defendant Hedger presides as the Municipal Court Judge. He alleges that the
7 Defendant Hedger denied him a fair and speedy trial.

8 **1. Judicial Immunity**

9 The United States Supreme Court has repeatedly held that judges and those performing
10 quasi-judicial functions are absolutely immune from damages for acts performed within their
11 judicial capacities. *See, e.g., Nixon v. Fitzgerald*, 457 U.S. 731, 766 (1982); *see also Miller v.*
12 *Davis*, 521 F.3d 1142, 1145 (9th Cir. 2008); *Ashelman v. Pope*, 793 F.2d 1072, 1075 (9th Cir.
13 1986) (en banc) (stating that “[j]udges . . . are absolutely immune from damage liability for acts
14 performed in their official capacities”); *Gregory v. Thompson*, 500 F.2d 59, 62 (9th Cir. 1974)
15 (“A seemingly impregnable fortress in American Jurisprudence is the absolute immunity of
16 judges from civil liability for acts done by them within their judicial jurisdiction.”). “Courts
17 have extended absolute judicial immunity from damage actions under 42 U.S.C. § 1983 not only
18 to judges but also to officers whose functions bear a close association to the judicial process.”
19 *Demoran v. Witt*, 781 F.2d 155, 156 (9th Cir. 1986). “Judges and those performing judge-like
20 functions are absolutely immune from damage liability for acts performed in their official
21 capacities.” *Ashelman*, 793 F.2d at 1075; *Miller*, 521 F.3d at 1145; *Partington v. Gedan*, 961
22 F.2d 852, 860 n.8 (9th Cir. 1992).

23 Plaintiff alleges that Defendant Hedger sentenced him to punishment without a trial and
24 denied him a fair and speedy trial. In *Pierson v. Ray*, the court held that the judicial functions of
25 determining guilt and sentencing a criminal defendant are protected by absolute immunity. *See*
26 *Pierson v. Ray*, 386 U.S. 547 (1967). Plaintiff asserts claims against Defendant Hedger for
27 conduct undertaken in his official judicial capacities. Defendant Hedger is, therefore, entitled to
28 judicial immunity from Plaintiff’s § 1983 claims. As a result, the Court recommends dismissal

1 of Plaintiff's claims against Defendant Hedger with prejudice for failure to state a claim upon
2 which relief can be granted. It is clear from the face of his complaint that these deficiencies
3 cannot be cured by amendment. The remedy for judicial errors is an appeal, not a § 1983 lawsuit
4 for damages. Thus, Defendant will not be granted leave to amend his complaint. Accordingly,

5 **IT IS HEREBY ORDERED** that Plaintiff's Application to Proceed *in Forma Pauperis*
6 is **granted**. Plaintiff shall not be required to pre-pay the full filing fee of four hundred dollars
7 (\$400.00).

8 **IT IS FURTHER ORDERED** that Plaintiff is permitted to maintain this action to
9 conclusion without the necessity of prepayment of any additional fees or costs or the giving of
10 security therefor. This Order granting leave to proceed *in forma pauperis* shall not extend to the
11 issuance of subpoenas at government expense.

12 **RECOMMENDATION**

13 **IT IS HEREBY RECOMMENDED** that Plaintiff's Complaint be **dismissed** with
14 prejudice for failure to state a claim upon which relief may be granted.

15 **NOTICE**

16 Under Local Rule IB 3-2, any objection to this Finding and Recommendation must be in
17 writing and filed with the Clerk of the Court within fourteen (14) days. Appeals may be
18 waived due to the failure to file objections within the specified time. *Thomas v. Arn*, 474 U.S.
19 140, 142 (1985). Failure to file objections within the specified time or failure to properly address
20 and brief the objectionable issues waives the right to appeal the District Court's order and/or
21 appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157
22 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

23 Dated this 9th day of November, 2018.

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26 GEORGE FOLEY, JR.
27 UNITED STATES MAGISTRATE JUDGE
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